

**JUL 31 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

VICTOR MANUEL BRISENO  
GODINEZ,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 05-75474

Agency No. A95-178-461

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted July 24, 2006\*\*

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Victor Manuel Briseno Godinez, a native and citizen of Mexico, petitions  
for review of the Board of Immigration Appeals' ("BIA") order dismissing his

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\* This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by Ninth Circuit Rule  
36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

appeal from an immigration judge's ("IJ") decision denying his application for cancellation of removal. We dismiss the petition for review.

We lack jurisdiction to review the agency's discretionary determination that Briseno Godinez failed to show exceptional and extremely unusual hardship. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929 (9th Cir. 2005).

We lack jurisdiction to review Briseno Godinez's ineffective assistance of counsel claim because he failed to raise that issue before the BIA. *See Baria v. Reno*, 94 F.3d 1335, 1341 n.6 (9th Cir. 1996) (explaining that this court lacks jurisdiction to review ineffective assistance of counsel claims where there is a failure to exhaust).

We do not consider Briseno Godinez's contention regarding physical presence, raised in his reply brief, because the failure to establish hardship is dispositive. *See Romero-Torres v. Ashcroft*, 327 F.3d 887, 889 (9th Cir. 2003) (noting that an applicant must establish continuous physical presence, good moral character and hardship to qualify for relief); *see also Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (holding issues which are not specifically raised and argued in a party's opening brief are waived).

**PETITION FOR REVIEW DISMISSED.**